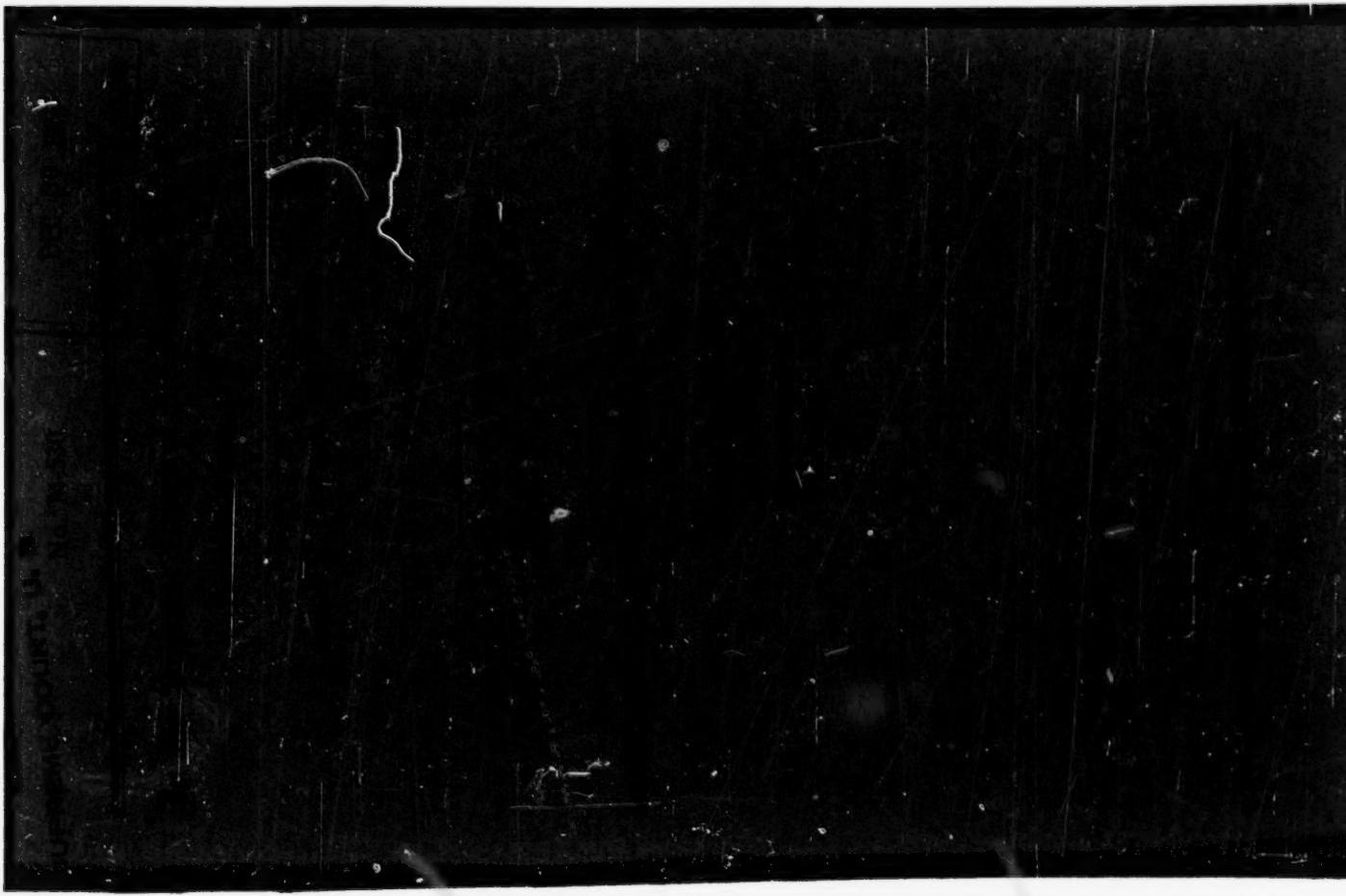

In the Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-530

RALEIGH H. LAWHON, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

After a jury trial in the United States District Court for the Middle District of Florida, petitioner was convicted of three counts of willfully subscribing a false income tax return and three counts of attempted income tax evasion, in violation of 26 U.S.C. 7201 and 7206(1). The convictions related to the years 1963, 1964, and 1965. Petitioner was fined $9,000 and ordered to pay the costs of prosecution.[1] The court of appeals affirmed (Pet. App. A-1 to A-11).

The basis of petitioner's conviction was that receipts from certain citrus groves nominally owned by his children but in fact controlled by him should have been

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[1]The fine was imposed only on those counts charging attempted tax evasion.

reported by him as gross income. The evidence established that the income from the sale of fruit from the citrus groves was received by petitioner, deposited in bank accounts controlled by him and commingled with his funds. Petitioner argues (Pet. 5) that the district court erred in instructing the jury as follows (Pet. App. A-22):

> Ordinarily income derived from property is taxable as income to the owner of the property. But there are exceptions to that rule: If a person other than the owner receives the income and the recipient has unfettered command and freedom to enjoy the income as his own at his option then such income may be taxable to him even though he did not own the property which produced the income.

Petitioner urges that ownership of property determines the taxability of income resulting from the sale or use of that property. But in *Corliss* v. *Bowers*, 281 U.S. 376, 378, this Court stated:

> * * * [T]axation is not so much concerned with the refinements of title as it is with actual command over the property taxed * * * .
>
> * * * * *
>
> The income that is subject to a man's unfettered command and that he is free to enjoy at his own option may be taxed to him as his income * * * .

See also *Rutkin* v. *United States*, 343 U.S. 130, 137; *James* v. *United States*, 366 U.S. 213, 216, 219. Although petitioner argues that *Corliss* v. *Bowers, supra*, did not announce a general principle of tax law, this Court has explicitly characterized that decision as "one of the basic precepts of the income tax law." *Commissioner* v. *Lester*, 366 U.S. 299, 303.

Petitioner further argues (Pet. 7-8) that receipts from the sale of fruit from his children's groves were not taxable to him because he distributed the receipts to the children. But the court of appeals held (Pet. App. A-8) that there was a jury question as to whether certificates of deposit, purchased by petitioner for his children, were informal distributions of income of the children or unrelated gifts. The court of appeals pointed out that the evidence was subject to conflicting interpretations. Petitioner's children had apparently not understood the transfers to be income, since they did not report the receipts as income (Pet. App. A-8). Thus, the issue was properly one for resolution by the jury, which found that the income in question was under petitioner's control and should have been reported by him.[2]

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ROBERT H. BORK,
Solicitor General.

DECEMBER 1974.

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[2]Contrary to petitioner's assertion (Pet. 8), *Poonian* v. *United States*, 294 F. 2d 74 (C.A. 9), does not conflict with the decision below. That case held only that Poonian could not be convicted for failing to report income that belonged to another and in which he had no beneficial interest. Here, it was precisely because petitioner was found to have had a beneficial interest in the income that it was taxable to him.